

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In The Matter of)	
)	
Recommendations of the Independent Panel)	EB Docket 06-119
Reviewing the Impact of Hurricane Katrina on)	
Communications Networks)	

Comments of the American Association of People with Disabilities

The American Association of People with Disabilities (AAPD) is the largest national nonprofit cross-disability member organization in the United States, dedicated to ensuring economic self-sufficiency and political empowerment for the more than 51 million Americans with disabilities. AAPD works in coalition with other disability organizations for the full implementation and enforcement of disability nondiscrimination laws, particularly the Americans with Disabilities Act (ADA) of 1990 and the Rehabilitation Act of 1973, as well as other statutes, such as the disability accessibility mandates in the Communications Act.

AAPD notes that the Commission's Independent Panel made recommendations in four areas: (1) pre-positioning the communications industry and the government for disasters in order to achieve greater network reliability and resiliency; (2) improving recovery coordination to address existing shortcomings and to maximize the use of existing resources; (3) improving the operability and interoperability of public safety and 911 communications in times of crisis; and (4) improving communication of emergency information to the public. The Commission also requested comment on the applicability of Independent Panel recommendations to all types of natural disasters and other types of incidents.

AAPD responds particularly to the topic of improving communication of emergency information to the public and in regard to 911 services, and specifically in regard to the needs of persons with disabilities. Our comments address (a) recommendations for strengthening current regulations and (b) enforcement of current regulations for emergency information in video programming accessible to persons with disabilities. Our comments are intended to supplement the overall record in regard to the impact of Hurricane Katrina and to ensure that the communications accessibility needs of persons with disabilities continue to be addressed in all disaster and emergency situations.

(a) Recommendations for Strengthening Current Regulations

The following recommendations were made in a recent report¹ and address changes that the Commission should consider in rulemakings on these topics.

The Emergency Alert System (EAS) is currently used only to deliver emergency information through broadcast (TV and radio) and cable service media. Persons with disabilities rely on the EAS system the same way individuals without disabilities rely on this system. The Commission should conduct a rulemaking that would consider extending EAS obligations to digital television and radio, satellite television and radio, and digital cable. The Commission should complete its proposed rulemaking to ascertain how this system can also be used to deliver content via other transmission protocols, including the Internet, telecommunications relay services, and wireless based systems

Working Groups. People with disabilities must be represented in any working groups addressing emergency communications, such as any federal advisory committees, study groups or similar bodies that the Commission convenes on this and related topics. Likewise persons with disabilities should be represented on any state or local entities that makes recommendations or provides planning guidelines for such groups.

For example, for **State 911 Deployment Plans**, as mandated by Section 3(b) of the Wireless Telecommunications and Public Safety Act of 1999 (911 Act), the Commission encourages and supports efforts by States to deploy comprehensive end-to-end emergency communications infrastructure and programs, based on coordinated statewide plans, including seamless, ubiquitous, reliable wireless telecommunications networks and enhanced wireless 9-1-1 service. In any rulemaking addressing this Act, the Commission should require representative participation of persons with disabilities.

User Interfaces. Companies need to make greater efforts to ensure that their user interfaces are accessible to all people with disabilities so that in times of emergency, inaccessible technology is not a barrier to public communication about an emergency. Although accessibility is already required for telecommunications products and services (under Section 255 of the Communications Act), the proliferation of soft buttons and on-screen menus on wireless and other telecommunications devices, without accessibility provisions, shows that this mandate is often disregarded. In any current or future rulemaking where the Commission has jurisdiction involving equipment and services that involve

¹Rehabilitation Engineering Research Center on Telecommunications Access, Gallaudet University and University of Wisconsin-Madison: "Research and Policy Recommendations from the State of the Science Conference on Accessible Emergency Notification and Communication," May 31, 2006, at <http://tap.gallaudet.edu/EmergencyConf/Emergency%20SOS%20Final%20Report.htm>, last accessed August 16, 2006.

interfaces, the Commission should be asking for comment on how covered entities are addressing disability accessible interfaces, such as on televisions, computers, radios, and Web enabled devices.

Funding for both emergency communications and accessible telecommunications access has historically been tied to universal-type funding mechanisms that are supported by telephone companies. As our nation transitions away from traditional telephone networks and toward Internet-based communication systems, current and future Commission rulemakings must address how funding will support these emergency and accessibility programs so that VoIP providers and other companies that provide services over the Internet participate fully in making emergency communications available and accessible to persons with disabilities.

Accessibility of Emergency Information in Video Programming. The Commission's current rules on the provision of emergency information to people who are blind and visually disabled only require an audible tone, designed to alert individuals that an emergency exists. Those individuals are then expected to obtain additional information elsewhere (e.g., via a radio broadcast). In any current or future rulemakings, the Commission should strengthen its rules to ensure that access by this population of individuals is equal to what is afforded individuals without vision disabilities. One possibility is to send audio emergency alerts over the second audio program (SAP) channel, or in the case of digital or new protocols, using other audio channels for this purpose.

Captioning Requirement. Although the Decoder Circuitry Act of 1990 requires captioning capability on all televisions with screens larger than 13 inches, and on any television receiver (of any size) that provides digital programming, newer devices, including battery-operated TVs, cell phones and PDAs that have not traditionally been defined as "television apparatus" are now beginning to receive television signals. These PDAs, cellphones and other "converged" devices have the ability to display text where there is video and need to be capable of receiving and displaying captions, especially in the event of an emergency. The Commission should be raising this concern in any current or future rulemakings that address these types of technologies since captioning is a source of emergency information for persons with hearing, and other, disabilities.

Solutions for the handling of emergency calls through telecommunications relay services need to be developed by Internet and video relay service providers. The Commission, in its rulemakings on relay services, must consider various options, including possible registration by all users of these services, consistent with what is required of VoIP users, for the purpose of ensuring that emergency calls made by persons with disabilities using these forms of relay services can effectively complete such calls.

Strengthening Section 255 of the Telecommunications Act. The Commission should continue its open rulemaking involving accessibility and usability to consider extending these requirements to services providers using Internet Protocol technologies, so that these entities are required to provide accessible emergency services to people with disabilities. This would support situations where deaf people have abandoned using TTYs and have lost their existing means of directly contacting and having interaction with 9-1-1 services. For example, the provision of real-time text over wireless devices would resolve this problem. AAPD believes this can be pursued through voluntary cooperation by the industry or via a regulatory strengthening. One option is for the Commission to open a rulemaking proceeding to define the obligations of VoIP providers as 9-1-1 access by people with hearing loss migrates from the public switched telephone network to Internet-based services.

(b) Enforcement of Regulations for Accessibility of Emergency Information

AAPD's main concern in this area focuses on enforcement of the existing obligation to make emergency information in video programming accessible to persons with disabilities.² These rules require broadcasters and cable operators to make local emergency information accessible to persons who are deaf or hard of hearing, and to persons who are blind or have visual disabilities. This means that emergency information must be provided both aurally and in a visual format by video programming distributors. Distributors include broadcasters, cable operators, satellite television services (such as DirecTV and the Dish Network), and other multichannel video programming distributors.

AAPD remains concerned about the number of individuals with disabilities who report lack of accessibility to emergency information. There is also much concern about blocking of emergency information by closed captioning or other information that appears on screen (for example, channel number and logo identifiers and streaming text and images that provide notification about upcoming programming). Most importantly, lack of accessibility to the critical details of the emergency, such as how to respond to the emergency, remain a concern. AAPD reviewed the Commission's reports on consumer complaints and believes there should be basis for the Commission to consider additional enforcement.³

²47 U.S.C. §305, Section 79.2 of the Commission's Rules, 47 C.F.R. § 79.2.

³ AAPD observes for instance, that in the first quarter of this year (Jan., Feb., Mar., 2006), the Commission's Consumer & Governmental Affairs Bureau (CGB) reports a total of 134 complaints filed at the Commission in regard to accessibility of video programming. These included 82 complaints against cable and satellite television services and 52 complaints against TV broadcasters. In both categories, complaints about disability accessibility outnumber complaints against these entities on other non-disability-related issues (with the exception of obscenity complaints against TV and Radio broadcasters). AAPD asserts that of the 52 complaints against TV broadcasters in the first quarter of 2006, likely more than a few involved the Part 79.2 regulations. See complaints

AAPD believes that the Commission does not always understand the extraordinary nature of the lives of persons with hearing disabilities who, when confronted with a disaster situation, such as occurred with Hurricane Katrina, frantically search for information on whatever channels they have the means to reach and cannot find the relevant information that everyone else is hearing. In fact, remarks made to the **FCC Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks** state this:

“Deaf and hard of hearing consumers were frustrated that they could get news about Katrina on national news program broadcasts that were captioned, but could not find out what was happening in their own towns through local newscasts. Here in Mississippi, they weren’t given important information such as the need to boil or treat water. And in Lafayette, LA there were times when the only visual information a local TV station provided was scrolling captions with phone numbers to call and a list of closed roads.”⁴

When lives are disrupted on the scale of such a hurricane as Katrina, the last thing such a person with a hearing disability is going to do is to complain to the Commission, since resolving the immediate problems of housing displacement and returning to a normal life will take precedence over complaining to a remote federal agency that does not have a convenient form for filing such complaints. AAPD does not – and nor should the Commission — expect persons in the community of persons with disabilities to submit complaints at the rate of the general population, for instance when it becomes incensed about obscenity issues. This means that any one complaint about lack of accessibility of emergency information in video programming that the Commission receives should be taken very seriously as it could represent the articulation of a situation being experienced by thousands of others. AAPD believes that the Commission did receive complaints about lack of accessibility to emergency information in video programming during the Hurricane Katrina period and that the Commission failed to act fully upon them.

AAPD reminds the Commission that, among the multiple enforcement actions taken up by the Commission’s Enforcement Bureau, it is only recently,

report at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-265565A1.doc.pdf, last accessed August 15, 2006. Likewise, in the third quarter of the previous year, during the period when Hurricane Katrina was raging (Jul., Aug., Sept., 2005), AAPD notes that CGB received 15 informal accessibility complaints against cable and satellite TV companies and 13 complaints against television companies, or a total of 28 informal disability accessibility complaints in video programming. AAPD refuses to believe that none of these complaints involved lack of accessibility to emergency information in video programming in regard to Hurricane Katrina and that not were actionable. See complaint report at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-262020A1.pdf, last accessed August 16, 2006.

⁴ Cheryl Heppner, Deaf and Hard of Hearing Consumer Advocacy Network, Remarks to the Independent Panel, March 6, 2006, Washington, D.C.

beginning in February 2005, that *any* enforcement action was taken against video programming distributors who were violators of these regulations, although it was five (5) years earlier that these regulations were first promulgated. Furthermore, AAPD notes that of the thousands of television stations and cable systems that are subject to these regulations, only a scant eight (8) forfeitures have been proposed despite hundreds of complaints received by the Commission about lack of access to emergency information both before and since these regulations were issued. Likewise, AAPD notes that only a total of about \$141,000 has been proposed for these forfeitures,⁵ a meager sum expected from an industry that delivers billions of dollars worth of program content.

AAPD supports strongly the few enforcement actions undertaken by the Commission in regard to making accessible the emergency information in video programming. Without enforcement action, these regulations are not worth the paper they are printed on; furthermore, without enforcement, these regulations are a slap in the face to the persons with disabilities, and their representatives, who have taken their valuable time to contribute to the Commission's rulemakings. Particularly, in these times of unusual disruptions caused by individuals bent on destroying the social fabric of American society, critical details made accessible in emergency information in video programming will save the lives of persons with disabilities.

AAPD contends that the FCC should develop stronger enforcement mechanisms in regard to hurricane situations and related emergency situations, to ensure that video programming distributors comply with their obligation to make emergency information accessible to people with hearing and vision disabilities, and that it acts immediately on violations. In this, AAPD is merely echoing the recommendations of the National Council on Disability, another independent government agency has twice made, in both 2006 and 2006, recommendations to the President and Congress on the topic of enforcement of these regulations.⁶ Likewise a similar recommendation was made by the Rehabilitation Engineering Research Center on Telecommunications Access at Gallaudet University and University of Wisconsin-Madison in May 2006.⁷

⁵ FCC Enforcement Bureau Emergency Information Access proposed forfeitures against various broadcasters are listed at <http://www.fcc.gov/eb/tcd/EIA.html>, last accessed August 15, 2006.

⁶ National Council on Disability, "The Impact Of Hurricanes Katrina And Rita On People With Disabilities: A Look Back And Remaining Challenges," August 6, 2006, at http://www.ncd.gov/newsroom/publications/2006/hurricanes_impact.htm, last accessed August 15, 2006, and in "Saving Lives: Including People with Disabilities in Emergency Planning," April 15, 2005, at http://www.ncd.gov/newsroom/publications/2005/saving_lives.htm, last accessed August 15, 2006.

⁷Rehabilitation Engineering Research Center, *op.cit.* See Policy Recommendation. P-11: "The FCC has to take a more proactive role in enforcing its rules on visual access to televised emergency programming (contained at 47 C.F.R. §79.2). While enforcement has improved over the past year, compliance remains inadequate. One option is for the FCC to conduct regular compliance reviews of local stations around the country. Similarly, the FCC needs to improve enforcement of its digital

AAPD appreciates the opportunity to support the record on this subject of applicability of recommendations to all types of disasters. Strengthening and enforcing existing regulations to make emergency information accessible to and usable by persons with disabilities is critical to ensuring the welfare and safety of all.

Sincerely,

Jenifer Simpson
Senior Director, Telecommunications and Technology Policy
American Association of People with Disabilities (AAPD)
1629 K Street, NW, Suite 503
Washington, DC 20006
Tel: (202) 457-0046 Ext. 31
Email AAPDJenifer@aol.com

captioning rules. Although these rules now require all new digital programming to have captions, consumers report that most programming providers are not fulfilling this obligation.”